

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IRINEO SERIO MORENO,

Case No. 22-CV-0908 (ECT/JFD)

Petitioner,

v.

REPORT AND RECOMMENDATION

UNITED STATES OF AMERICA,

Respondent.

In an Order dated April 13, 2022, this Court ordered Petitioner Irineo Serio Moreno to “file a supplement better explaining how his present custody violates the U.S. Constitution and/or federal law” because the Court could not discern what arguments founded the basis for the petition. (Dkt. No. 3 at 1–2.) The Court gave Moreno until April 27, 2022, to file the supplement, failing which the Court would recommend dismissing this action without prejudice for failure to prosecute. (*Id.* at 3 (citing Fed. R. Civ. P. 41(b)).) That deadline has now passed, and Moreno has not submitted the required supplement.

In fact, Moreno has not communicated with the Court about this case at all since commencing this action, including responding to the letter mailed by the Clerk of Court on April 12, 2022. (Dkt. No. 2.) The letter instructed Moreno to either pay the filing fee or file an application to proceed *in forma pauperis* within 15 days, or potentially face summary dismissal without prejudice. (*Id.* at 1.)

Accordingly, this Court now recommends, in accordance with its prior Order and the letter from the Clerk of Court, that this action be dismissed without prejudice under

Federal Rule of Civil Procedure 41(b) for failure to prosecute. *See, e.g., Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: May 6, 2022

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).